

Tab 15:

**Legal Advocacy for LGBTQ Survivors of Intimate Partner Violence**

Presenters

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## Legal Issues and Challenges for LGBT Survivors of Domestic Violence

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## Agenda

- o Introductions
- o Overview of LGBTQ Terminology
- o LGBTQ Domestic Violence Basics
- o Issues and Challenges LGBTQ Domestic Violence Victims/Survivors May Face
- o Legal Issues w/ Scenario Work

## Terms Associated with LGBTQ Identities and LGBTQ Communities

### Sexual Orientation & Gender Identity

- **Sexual orientation** refers to a person's emotional, romantic and sexual attraction to individuals of a particular gender.
- **Gender identity** describes the gender with which a person identifies (i.e., whether one perceives oneself to be a man, a woman, or describes oneself in other ways).

## What does LGBTQ mean?

- **The L: Lesbian** – A woman who is predominately or exclusively attracted to women emotionally, physically, spiritually and/or sexually.
  - **The G: Gay** – A term identifying a man who is predominantly or exclusively attracted to men emotionally, physically, spiritually and/or sexually.
  - **The B: Bisexual** – A term identifying a person who is attracted to men and women emotionally, physically, spiritually and/or sexually.
- ✓ Note: The L, G and B relate to a person's sexual orientation.

## What does LGBTQ mean?

- **The T: Transgender** – An umbrella term used to describe a continuum of individuals whose gender identity and how its expressed, to varying degrees, does not correspond to their biological sex.



- ✓ Note: The T relates to a person's gender identity.

## What fall under the umbrella of “Transgender”?

- **Transsexual** – A person who has gone through any part of the process of Sex Reassignment Surgery (SRS) and identifies as the gender they feel they are.
  - **Female to Male (FTM)** – a person born female who transitions to live and identify full time as a male/man.
  - **Male to Female (MTF)** – a person born male who transitions to live and identify full time as a female/woman.
- **Drag Queen** – person, sometimes gay men, impersonating famous females, usually for performance.
- **Drag King** – person, sometimes lesbians, impersonating famous males, usually for performance.
- **Cross-dresser** – person who wears clothing opposite their assigned gender, usually not all the time. Does not identify as the opposite gender identity.

## What does LGBTQ mean?, continued...

**The Q: Questioning** -Refers to people who are exploring or questioning their sexual feelings, orientation, and/or sexual identity, and who may be experiencing lesbian, gay, bisexual, or transgender feelings or urges.

**The Q: Queer**– (1) an umbrella term used to refer to the entire LGBTQQ community. (2) A term identifying individuals that identify as a sexual minority. (3) A term that some straight allies use to self-identify, acknowledging their connection to the community, based upon shared values, supportive behavior, commitment to social change etc...which isn't contingent on their own sexual identity

## What's most important?

- LGBTQ individuals are incredibly diverse and come from all racial, ethnic and socio-economic backgrounds.
- Language and words that communities use to define themselves vary temporally, geographically, and culturally.
- Because many oppressed communities have had their right to self-identify taken away, using respectful language is the first important step in becoming an ally.

## Domestic Violence in LGBTQ Relationships



## “You fight like a girl!”

- Feet hammered while asleep.
- Arm wrenched out of socket.
- Hit in the head by a brick
- Eardrum ruptured by blows to the head with a shovel.
- Gunshot wound to shoulder - not allowed to seek medical assistance for hours.
- Ribs broken and then gun held to head for 2 hours
- Forced to kneel on broken glass.

## Prevalence - Myth and Reality

- **Myth:** Battering in LGBTQ relationships are not as prevalent, harmful or dangerous as battering in relationships of non-transgender heterosexual people.
- **Reality:** Current research confirms that battering is just as prevalent (occurring in 25-33% of relationships) and just as harmful and dangerous among LGBTQ people as among non-transgender heterosexual people (NCAVP, 2007 National Domestic Violence Report).

## Prevalence continued...

- ❑ While many LGBTQ folks believe that they don't know anyone who is being battered, that has more to do with a lack of awareness of battering in our communities than it has to do with actual frequency and severity of LGBTQ domestic violence
- ❑ LGBTQ batterers subject their partner to physical, emotional, sexual and economic abuse ranging from manipulation to murder.

**Issues and challenges  
that LGBTQ domestic  
violence victims/survivors  
may face**

## Dynamics of LGBTQ Domestic Violence

LGBTQ Survivors face the same tactics of abuse that heterosexual survivors face

*But, LGBTQ survivors also face the additional hurdles related to homophobia/biphobia/transphobia and heterosexism/heterocentrism etc.*

Batterers are savvy ~ they use these hurdles against survivors in a variety of ways.

## Heterosexism & Heterocentrism

- ☞ Heterosexism is a belief that male/female sexuality is the only natural or moral mode of sexual behavior.
- ☞ Heterocentrism is an assumption (often subconscious) that everyone is heterosexual, and the attitudes associated with assumption.
- ☞ Heterocentrism often shows up in less intentional ways in every day life. For instance, when a woman says she is going on a date, many people will ask, "What's his name?" or "Is he cute?" assuming it is a heterosexual date. Nevertheless, these people may not have anything against same-sex dating.

## Issues and challenges that LGBTQ domestic violence victims/survivors may face

- ☞ Fear of continued victimization by law enforcement, criminal justice, and social service workers keeps many domestic violence survivors in same-sex relationships from seeking assistance and safety.
- ☞ Fear of being outed to friends, family, employers / employees may make it more difficult for the survivor to seek assistance. (i.e. military).
- ☞ The LGBT community generally avoids and ignores relationship violence. The blindness to this issue leaves survivors **and** abusers without necessary resources within their own communities to help stop the violence.
- ☞ Myths that LGBT domestic violence doesn't happen, that women can't abuse and men can't be abused, and that only the "butch" / masculine partner can be the abuser often make it difficult for survivors to identify abuse or afraid to report the abuse.
- ☞ Same-Sex relationships are often not considered to be an acceptable family or partnership.

## Additional Issues and Challenges

- ☞ Justifying abuse by saying that the partner is not "really" lesbian, gay, bisexual or transgender. This can be used as a tool in verbal and emotional abuse as well as to further the isolation of a victim from community.
- ☞ Portraying the violence as mutual and even consensual, especially if the partner attempts to defend against it, or as an expression of masculinity or some other "desirable" trait.
- ☞ Lack of knowledgeable resources.
- ☞ Small LGBTQ community means it is harder to hide and create safe space

## Screening Basics with Individuals in LGBTQ Relationships



## The Big Myth of Mutual Abuse

### Question:

Well, if both parties are being physically violent with one another, aren't they both batterers?

### Answer:

No!

What we're missing from this example is context...why were both people physically violent? Was one person defending themselves?

Abuse is defined as one person systematically using power to control the other.

## Assessing who you are working with.

- Service providers are faced with the challenge, when dealing with same-sex domestic violence of determining who is the abuser and who is the survivor.
- Differentiating LGBTQ victims from abusers is crucial for both the client and the service organization as a whole.
- General Practice Tips:
  - Look at the Context, Intent, Effect
  - Ask lots of questions
  - Consider behavioral patterns – who is taking responsibility, is the person worried about upsetting the other person, are they afraid, if so why?



Legal Issues and Challenges  
for LGBT Survivors of  
Domestic Violence

## Protection Orders

- In most states, people in same-sex relationships can get protection orders against abusive partners
  - South Carolina and Montana, explicitly exclude people in same-sex relationships
  - 6 Jurisdictions explicitly allows for same-sex protection via statute or case law – CA, WA, NJ, OH, PA, & DC
  - All other states have gender-neutral language
    - \* Transgender clients relationship status is dependent on the gender identity and legal sex of the client under state law.

## Practice Tips...

- Beware of Outing – i.e., military survivor, are closed courtrooms possible, or ask for a hearing at the end of the calendar
- Be prepared for mutual arrest or cross filed petitions
- Are there other options where DVRO aren't an option? EX. Civil Harassment Orders, Criminal Advocacy

## Practice Tips...Transgender Clients

- Advocate for your client around chosen names or gender pronouns.
  - Make a statement to the judge at beginning of hearing about name and pronoun preference.
  - Use “also known as” or “formerly known as” to incorporate client’s chosen and/or legal name into proceedings.
- Learn what is necessary to legally change one’s name or gender in your jurisdiction.
- Be aware the batterer will likely use society transphobia against the survivor

## Immigration

- Ineligible to apply for self-petitioning VAWA immigration relief if in a “same-sex” relationship.
- LGBTQ survivors of Domestic Violence are eligible to apply for a U-VISA – requires that you are helpful to the investigation or criminal prosecution.
- Is Asylum an option?

## Marriage and Domestic Partnerships

- Same-sex couples who are married or registered domestic partners have all the rights and responsibilities of marriage under CA law, but no federal rights.
- This includes same-sex couples who married outside of CA after Prop 8 passed. Fam. Code § 308.

## Parentage Recognition

- When a child is born to a same-sex couple during marriage or domestic partnership, the non-biological parent is also a legal parent, even if there has been no adoption.
- Non-biological parents can be legal parents under Fam. Code § 7611(d) even if the parents are not married or in a domestic partnership.

## Tips for working with LGBTQ survivors

- Be aware that your clients might be out sometimes, but not others. They might be out to you, but not to family; out to their case manager, but not to police. Ask them and respect their answers.
- Ask your clients about the terms they prefer to have used to describe their sexuality and relationship.
- Ask your clients for their preferred pronouns and use them.
- Ask lots of questions, don't assume you know the answers (especially if you are LGBTQ yourself!)

## Additional Practice Points

- Partner with LGBTQ organization and domestic violence organization.
- Think about the client's safety – is there a plan in place?
- Make alliances with LGBTQ-friendly people in the police department, court system, and other service agencies
- Learn the laws as they affect your LGBTQ clients (DOMA☹).
- Screening!

# Questions?

## Resources:

L.A. Gay & Lesbian Center – [www.lagaycenter.org](http://www.lagaycenter.org)  
323.993.7649 or [dvlap@lagaycenter.org](mailto:dvlap@lagaycenter.org)

NCLR...

NCAVP - National Coalition of Anti-Violence Programs  
212.714.1184, [info@ncavp.org](mailto:info@ncavp.org), [www.ncavp.org](http://www.ncavp.org)

24-Hour National Domestic Violence Hotline – 800.799.7233